Court No. 2

In The High Court of Uttaranchal at Nainital.

First Appeal From Order No. 990 of 2001.
(Old No. 1115 of 1990)

National Insurance Company Ltd.
Having its Divisional Office,
M.G. Marg, Allahabad, through
Senior Divisional Manager.

..... Appellant

Vs.

(1)Smt. MathuraDevi W/o Sudan Singh,
R/o Village-Jilasu, P.O. Nirsa,
Tehsil and District-Chamoli.
(2)Sri Saukin Singh S/o Sunder Singh,
R/o Village-Sem, Tehsil-Partap Nagar
District-Tehri.
(3)Jai Krit Singh S/o Puran Singh,
R/o Village-Dusad Gaon, District-Chamoli,
(4)Sridhar Prasad Hatwal S/o Ram Chandra Hatwal,
R/o Village Hat, Tehsil and Dist.-Chamoli.

..... Respondents.

Sri Lalit Belwal, learned counsel for the appellant.
Sri Rajendra Dobhal, learned counsel for the respondents No.3.

Dated: 16th Aug. 2004.

Hon'ble P. C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the appellant-National Insurance Company Ltd. under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 31.07.1990 passed by Motor Accident Claims Tribunal/District Judge, Chamoli in Motor Accident Claim Petition No. 5 of 1988,

Brief facts of the case giving rise to the present appeal are that on 14.02.1998 deceased Sunder Singh was

travelling in Bus No. USY 03268; that at about 02.00 in the noon the aforesaid bus met with an accident near Baidanu (Langasu) in which deceased Sunder Singh-husband of the claimant died alongwith other passengers on the spot due to the accident. The said bus was owed by Opp. party No.1 and insured with Opp.party No.4-National Insurance Company. The accident was caused due to rash and negligent driving of the vehicle (Bus). The deceased was aged about 35 years at the time of accident. He was employed in the office of Executive Engineer, Investigation and Planning, Joshimath and was earning Rs. 1,000/- per month as his salary besides the agriculture work. The claimant had filed the claim petition for compensation of Rs. 1,50,000/- due to the death of deceased Sunder Singh.

The Opp. party No.1 and Opp.party No.4-National Insurance Company contested the case before the Tribunal denying all the allegations except the insurance of the vehicle. On the pleading of the parties, the Tribunal framed the following issues:-

(1) Whether Sudan Singh s/o Vaad Singh was traveling the Bus? If so, he died due to injuries received in the accident?
(2) (A)Whether the accident occurred due to negligence of the Bus driver?
(b)Whether the accident was occurred due to beyond control of the driver?
(3) To what relief the claimant is entitled and what is the liability of National Insurance Company?

The Tribunal after recording the evidence, decided the issue in favour of the claimant and awarded the claim petition for Rs. 75,000/- as compensation in which the Opp. party No.4- National Insurance Company was held liable to pay compensation amounting to Rs. 50,000/- .

The appeal was filed only on the ground that the appellant- Insurance Company had only statutory liability of Rs. 15,000/- per passenger while the Insurance Company has been held liable to pay Rs. 50,000/-. The learned counsel for the appellant submits that in view of the judgment of Apex Court in ***New India Assurance Co. Ltd. versus C.M. Jaya and others, reported in (2002) 2 Supreme Court Cases 278,*** the Insurance Company is liable to pay the statutory liability. Rest of the amount of award is to be paid by the owner and driver of the vehicle in question. The owner was party before the Tribunal. The Tribunal has not bifurcated the amount after considering the insurance policy. Therefore, we provide that Rs. 15,000/- as statutory compensation alongwith interest shall be paid by the appellant-National Insurance Company Ltd. and rest of the payment shall be made by the owner of the vehicle in question. However, we do not find any infirmity or illegality in the impugned order on the basis of evidence on record in determining the compensation payable to the claimant.

Therefore, the compensation awarded by the impugned order is herby affirmed. The appeal is partly allowed. The case is sent back to the Tribunal for bifurcation of the amount to be paid to the claimant by the Insurance Company and owner of the vehicle in question as per provisions of the old Act. The Tribunal concerned shall decide the mater within two months from the date of receipt of certified copy of this order after hearing the owner of vehicle in question. Sri Lalit Belwal, learned counsel for the appellant-National Insurance Company Ltd. Undertakes to ensure that the Insurance Company will

place the order of this Court to the Tribunal concerned within a month from today.

The amount already deposited in this case towards the compensation before the Tribunal shall be released forthwith in favour of the claimant.

(B.S. Verma, J.) **(P.C.Verma, J.)**

P.Singh